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ProCare Hospice of Nevada, LLC and
Mark Birnbaum*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PAULA HAMBLY, an individual,

Plaintiff,

vs.

PROCARE HOSPICE OF NEVADA, LLC, a
Nevada entity and MARK BIRNBAUM, an
individual,

Defendants.

Case No.

**NOTICE TO FEDERAL COURT OF
REMOVAL OF CIVIL ACTION FROM
STATE COURT**

Pursuant to 28 U.S.C. § 1332(d), Defendants hereby notify the Court of the removal of *Paula Hambly v. ProCare Hospice of Nevada, LLC, and Mark Birnbaum*, Case No. A-21-834030-B, which was filed in the Eighth Judicial District Court in Clark County, Nevada. In support of said removal, Defendants state as follows:

1. On January 8, 2021, ProCare Hospice of Nevada (“ProCare”) and Mark Birnbaum (“Birnbaum”) among others commenced an action in the Eighth Judicial District Court of Clark County, Nevada, entitled *ProCare Hospice of Nevada, LLC, et al. vs. Adam Perelgut, et al.*, Case No. A-21-827603-B (the “Original Case”).

2. On February 23, 2021, Paula Hambly filed a Counterclaim in the Original Case alleging causes of action against ProCare and Birnbaum. A copy of the Answer to First Amended Complaint, Jury Demand and Counterclaim is attached hereto as **Exhibit A**.

1 3. On March 29, 2021, Paula Hambly filed a First Amended Counterclaim. A copy
2 of the Amended Answer to First Amended Complaint, Jury Demand and First Amended
3 Counterclaim is attached hereto as **Exhibit B**.

4 4. On April 7, 2021, ProCare and Birnbaum filed a Motion to Sever the
5 Counterclaim's first, second, third, fourth, seventh, eighth, ninth, tenth and eleventh causes of
6 action from the Original Case. A copy of the Motion to Sever is attached hereto as **Exhibit C**.

7 5. While awaiting an order on the Motion to Sever, ProCare and Birnbaum each filed
8 an Answer to the Counterclaim. A copy of ProCare's Answer is attached hereto as **Exhibit D**, and
9 a copy of Birnbaum's Answer is attached hereto as **Exhibit E**.

10 6. On April 29, 2021 the Eighth Judicial District Court of Clark County, Nevada
11 granted ProCare and Birnbaum's Motion to Sever and retained the original filing date for
12 purposes of the statute of limitations only. A copy of the Order Granting Motion to Sever is
13 attached hereto as **Exhibit F**. The following week, the Court clerk docketed a new case, *Paula*
14 *Hambly v. Procare Hospice of Nevada, LLC, and Mark Birnbaum*, and assigned a new case
15 number, Case No. A-21-834030-B (the "New Case"). **Exhibit G**. Thus, Paula Hambly is the
16 Plaintiff and ProCare and Birnbaum are the Defendants in the New Case.

17 7. ProCare and Birnbaum could not initially remove the Counterclaim because,
18 having filed the Original Case, they were not a "defendant" in the Original Case, and
19 counterclaims are not subject to removal. 28 U.S.C. § 1441; *Home Depot U.S.A., Inc. v. Jackson*,
20 139 S. Ct. 1743, 1748 (2019) ("Section 1441(a) thus does not permit removal based on
21 counterclaims at all").

22 8. However, upon the State Court severing the first, second, third, fourth, seventh,
23 eighth, ninth, tenth and eleventh causes of action from the Counterclaim and docketing a New
24 Case the first week of May 2021, in which ProCare and Birnbaum are now the Defendants,
25 Defendants have the right to remove the New Case. 28 U.S.C. § 1441.

26 9. This Notice of Removal is timely because it is being filed within thirty (30) days of
27 the Order Granting Motion to Sever, which ordered the establishment of the New Case and which
28 first allowed ProCare and Birnbaum to ascertain that "the case is one which...has become

removable.” 28 U.S.C. § 1446 (“[I]f the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable”); *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1251 (9th Cir. 2006) (“[W]e don't charge defendants with notice of removability until they've received a paper that gives them enough information to remove.”); *In re Roundup Prods. Liab. Litig.*, MDL No. 2741, at *7 (N.D. Cal. July 9, 2019) (“[T]he clock only begins running once a document reveals that a case is presently removable.”)

10. The New Case is properly removed to federal court under federal question jurisdiction because it contains claims which arise under federal law, specifically, the Fair Labor Standards Act, Title VII of the Civil Rights Act, and the Age Discrimination in Employment Act. *See* 28 U.S.C. §§ 1331, 1441.

11. Any remaining state law claims are also properly removed pursuant to the Court's supplemental jurisdiction. 28 U.S.C. § 1367(a).

12. Venue is proper in this Court as this is the judicial district in which a substantial part of the events or omissions giving rise to the claims occurred. 28 U.S.C. § 1391.

13. A true and correct copy of this Notice of Removal is being filed this date with the Clerk of the Eighth Judicial District Court of the State of Nevada.

WHEREFORE, ProCare and Birnbaum pray that the above-referenced action, *Paula Hambly v. Procare Hospice of Nevada, LLC, and Mark Birnbaum*, Case No. A-21-834030-B, now pending in the Eighth Judicial District Court of the State of Nevada in and for the County of Clark be removed therefrom to this Court.

Dated this 12th day of May, 2021.

JACKSON LEWIS P.C.

/s/ Deverie J. Christensen
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*Attorneys for Defendants ProCare Hospice
of Nevada, LLC and Mark Birnbaum*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Jackson Lewis P.C., and that on this 12th day of May, 2021, I caused to be served via the Court's CM/ECF Filing, a true and correct copy of the above foregoing **NOTICE TO FEDERAL COURT OF REMOVAL OF CIVIL ACTION FROM STATE COURT** properly addressed to the following:

Anthony B. Golden
Amanda J. Brookhyser
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Attorneys for Plaintiff
Paula Hambly

/s/ Kelley Chandler
Employee of Jackson Lewis P.C.

4818-0805-2200, v. 1